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Author(s): Andrew Wilson

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UKRAINE
ANDREW WILSON

Oranges and Regions

The Demonstrators were back outside parliament in Kiev, except this time they were of a different hue to those who produced Ukraine's Orange Revolution in late 2004. New elections are likely, but will the results be any more decisive than in the past?

IN ALL POST-MORTEMS ON THE ORANGE REVOLUTION, UKRAINE GETS great credit for conducting mostly free and fair parliamentary elections in March last year. Unfortunately, after months of wrangling, they resulted in the opposition taking power. Of the three main 'orange' parties, the Yulia Tymoshenko Block was left fulminating outside the government, the Socialists defected to join the new Anti-Crisis Coalition led by the east Ukrainian Party of Regions, and President Viktor Yushchenko's Our Ukraine party had to try to reach an accommodation with the new powers-that-be.

Yushchenko signed a formal power-sharing agreement last August, but the new government showed no intention of sharing power, and instead began a relentless guerrilla war progressively reducing the president's remaining powers.

On April 2, Yushchenko surprised friends and foes alike by taking a rare dramatic step. The final straw was the defection of eleven deputies to the ruling coalition, which began to boast of expanding its ranks to win a two-thirds' majority in parliament, giving it almost unlimited freedom of action. The president cited the new system of 'imperative mandate' – deputies must remain in the parties they were elected to serve by proportional representation – ordered the dissolution of parliament, and scheduled new elections for May 27.

The government coalition immediately cried foul. The parliament elected last year was due to run for five years, until 2011. The legal basis for the president's decree was unclear. The coalition was clearly guilty of breaking the general principles of

DR ANDREW WILSON is an Associate Fellow of the Russia and Eurasia Programme at Chatham House and Senior Lecturer at the School of Slavonic and East European Studies, London University.



the imperative mandate, but there is as yet no detailed enabling law spelling out exactly what these are.

Yushchenko's decree made no mention of Article 90 of the constitution, which describes the circumstances in which the president may dissolve parliament. Several of these conditions – a precise timetable for parliament to assemble, constitute a 'majority' and nominate a prime minister – had been missed between March and August last year, but the president decided against the tricky strategy of retrospective appeal. He had been on the verge of ordering a dissolution last summer, a retreat he now obviously regrets.

Crisis to Crisis

The government's initial reaction was also hardly in a constitutional spirit. It attempted to sabotage elections by denying funding, and reappointed as head of the Central Election Commission the notorious Serhii Kivalov, dismissed at the

height of the Orange Revolution for overseeing voting fraud. It surrounded parliament with demonstrators, some of whom were clearly rented.

Both sides drifted towards adjudication by the Constitutional Court, though it was far from clear that Yushchenko at least needed to do so. The Ukrainian legal tradition is that decrees are operational until they are ruled unconstitutional. There is no principle of suspension sub judice.

The Constitutional Court, meanwhile, has been lumbering from crisis to crisis since falling inquorate in October 2005 when most judges came to the end of their nine-year terms. Parliament refused to restaff the Court until it got its way over the governmental crisis last August.

Unfortunately, the Ukrainian system – the president appoints six out of eighteen judges, parliament appoints six, and a ‘congress of judges’ themselves appoint the final six – has simply transferred political gridlock to the Court, which has not made a single decision since being restaffed.

Worse, Ukraine’s newly-free mass media began exposing the private struggle for influence over the Court, and the spectacular corruption of some leading judges. The self-appointed rapporteur in the case examining Yushchenko’s decree, Siuzanna Stannik, a one-time Justice Minister under former president Leonid Kuchma, was accused of accumulating \$12 million worth of property in various relatives’ names. More generally, the Court clearly hoped to duck a decision it preferred politicians to make.

Damage Limitation

If Yushchenko’s first decree was bold, his second was adroit. He waited until Prime Minister Viktor Yanukovich was out of the country on April 26 to reschedule elections for June 24. More

importantly, he shifted the legal ground by citing the government’s faults much more clearly, particularly its failure to seek a fresh mandate after renaming itself the National Unity Coalition in March, which could fall foul of Article 90.

At the same time, Yushchenko began shifting and sacking key personnel. Most dramatically, he removed Stannik and the deputy head of the Court. Both were replaced by centrist politicians capable of building bridges with moderates in the Party of Regions, including Stepan Havrysh, a big-hitter from the Kuchma era.

Most surprisingly, he reappointed Sviatoslav Piskun as Prosecutor General. Piskun had previously served twice in the post, in 2002-2003 and 2004-2005, when he obstructed prosecutions of powerful members of the Kuchma regime. However, Piskun is notorious for slavishly serving any master and was soon issuing warnings that the elections were legal and that anyone who obstructed them would be prosecuted.

Meanwhile, the Party of Regions’s business wing was

growing increasingly worried about the damage the crisis was doing to Ukraine’s image and to their plans for future company share floatations and international loans. The surprise announcement awarding the 2012 European football championship to Poland and Ukraine only heightened these fears, and prompted calls to rally round the president. On May 4, Yanukovich was persuaded to sign a joint statement with Yushchenko agreeing to new elections.

Back to the Future

The date has still to be set. June 24 is unlikely, given the legal and financial preparations that still have to be made. Yushchenko wants a date before everybody disperses in August; the Party of Regions prefers some time between September and November.

Kivalov has given up the pretence of leading the Election Commission, which is back in the hands of the reasonably neutral Yaroslav Davydovych. The old parliament will have to be recalled and its recall accepted as legitimate by all sides, to pass some necessary legislation. This was supposed to happen on May 8 or 9, but did not.

How much difference would new elections make? The most reliable recent poll puts Regions on 33.5 percent, the Tymoshenko Block on 19.6 percent, and Our Ukraine on 12.9, with 4.2 percent for the Communists and 3.7 percent for former Interior Minister Yurii Lutsenko’s Samooborona ‘Self-Defence’ party. A minimum vote of three percent is necessary to win any seats under a proportional representation system based on national party lists.

Unfortunately, this is more or less where we were in March last year. Our Ukraine has recovered some ground thanks to Yushchenko’s decisive action, but only by shifting votes within the orange camp. The Socialists have seemingly self-destructed, polling less than two percent. The one newcomer is Samooborona, which has been prominent in recent demonstrations, raising the prospect of the slimmest of wins for a different orange troika to the one that let victory slip from its grasp last year.

The Party of Regions, on the other hand, is left with only one small partner, the Communists. A big shift of its considerable resources could help the Socialists or Nataliia Vitrenko, an east Ukrainian firebrand, win the necessary three percent, but all their minor allies would be likely to take votes from each other. One reason for delaying the polling date could be the launch of a new satellite ‘project’, but normally Regions likes to walk alone.

But this is to overlook the obvious momentum behind the May 4 agreement. Since September Yushchenko has been plotting a comeback strategy based on building a rival power-base of his own big business backers, while seeking to bring Yanukovich’s more pragmatic supporters into a broad, business-friendly compact.

The actual election results would therefore not make much difference if the plan is to set up a national unity coalition between Our Ukraine and Regions in the aftermath. Tymoshenko would then be the ironic loser. Having pressed so hard for new elections, she would be frozen out again. On the other hand, she would be able to campaign for the next presidential election as leader of a populist ‘anti-oligarch’ front – and the hatred of the nouveaux riches is as potent a political force in Ukraine as in Russia. In Russia, it was exploited by the Kremlin, with the arrest of Mikhail Khodorkovskii in 2003. Tymoshenko, in contrast, sees it as her ticket back to power.

A third possibility is that Regions does well enough to tempt it to govern alone, or with smaller allies, in which case, unless it has been chastened by Yushchenko’s clear challenge to its recent self-aggrandisement, we are back to square one. Except that this time, Regions could claim a double mandate, having won two elections in two years.

